**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A17-1112**

In the Matter of the Welfare of the Child of: N. E. R. and W. G. R., Parents

**Filed January 22, 2018**
**Affirmed**
**Larkin, Judge**

Clay County District Court
File No. 14-JV-17-1020

Brian P. Toay, Wold Johnson, P.C., Fargo, North Dakota (for appellant W.G.R.)

Brian J. Melton, Clay County Attorney, Jenny M. Samarzja, Chief Assistant County Attorney, Moorhead, Minnesota (for respondent)

Laurie Christianson, Moorhead, Minnesota (guardian ad litem)

Considered and decided by Smith, Tracy M., Presiding Judge; Larkin, Judge; and Hooten, Judge.

**U N P U B L I S H E D  O P I N I O N**

**LARKIN**, Judge

Appellant father challenges the district court's order terminating his parental rights, arguing that the court erred by basing the order on both voluntary and involuntary grounds. We affirm.

## FACTS

Appellant W.G.R. is the father of B.R., born in May 2016.[1] On August 12, 2016, respondent Clay County Social Services filed a child in need of protection or services (CHIPS) petition regarding B.R. Father admitted the CHIPS petition, and the district court adjudicated B.R. a CHIPS. After B.R. had been placed out of the home for approximately seven months, the county petitioned to involuntarily terminate father's parental rights under Minn. Stat. § 260C.301, subd. 1(b)(2), (b)(5) (2016), alleging that father had failed to comply with the duties imposed upon him by the parent and child relationship and failed to correct the conditions leading to B.R.'s out-of-home placement.

Two days before the scheduled trial on the county's petition, father filed a counterpetition seeking to voluntarily terminate his parental rights for good cause under Minn. Stat. § 260C.301, subd. 1(a) (2016). Father alleged that his intellectual capacity limited his "ability to properly parent his child and learn and understand the developmental needs of his child," that B.R. has developmental delays requiring a "greater-than-average understanding of the child's needs and development," and that, although he had improved his parenting abilities, he had not made enough progress to allow B.R. to be placed with him at that time or in the reasonably foreseeable future.

The case proceeded to trial on the competing termination of parental rights (TPR) petitions. The county presented testimony in support of its petition from a social worker who had been assigned to work with father and mother and from two public health nurses

[1] B.R.'s mother voluntarily terminated her parental rights to B.R. in the underlying proceeding. Mother is not a party to this appeal.

who had worked with the family. Father admitted the grounds for his voluntary TPR petition and testified that it was in B.R.'s best interests not to return to his care because of his cognitive limitations, mental- and physical-health issues, and limited parenting abilities.

After testifying in support of his petition, father moved "for a directed verdict in favor of [his] counter petition." Father argued that he had provided clear and convincing evidentiary support for a voluntary TPR and that "a basis for involuntary [TPR] is not relevant if there is good cause for a voluntary." The district court questioned whether there was authority indicating that one petition "stops the other if the end result is termination of parental rights," but the district court did not decide the issue. Instead, it denied father's motion because there was insufficient testimony regarding informed consent for father's admission.

The guardian ad litem (GAL) testified that termination of father's parental rights was in B.R.'s best interest because B.R. "needs permanency and [TPR] would afford permanency for him." The GAL did not take a position regarding whether voluntary or involuntary termination would be more appropriate.

The district court found that "[t]he evidence submitted to the Court is sufficient to prove both the County's Petition for Involuntary Termination, and [father's] Counterpetition for Voluntary Termination" and that "both petitions establish that it is in [B.R.'s] best interests for [father's] parental rights to be terminated." The district court granted both petitions, terminating father's parental rights to B.R. on both voluntary and involuntary grounds. Father appeals.

## D E C I S I O N

A district court "may upon petition, terminate all rights of a parent to a child: (a) with the written consent of a parent who for good cause desires to terminate parental rights; or (b) if it finds that one or more of [nine statutory grounds for involuntary termination] exist." Minn. Stat. § 260C.301, subd. 1 (2016). One of the statutory bases for involuntarily terminating a parent's parental rights is that the parent is palpably unfit to be a party to the parent-child relationship. Minn. Stat. § 260C.301, subd. 1(b)(4). "It is presumed that a parent is palpably unfit to be a party to the parent and child relationship upon a showing that the parent's parental rights to one or more other children were involuntarily terminated." *Id.*

Father contends that the district court erred as a matter of law by granting TPR on both voluntary and involuntary grounds.[2] Specifically, father argues that "if a District Court finds good cause for a voluntary termination of parental rights, the proceedings are voluntary regardless of possible additional grounds for involuntary termination."[3] Father's

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[2] Father does not otherwise challenge the district court's order terminating his parental rights under Minn. Stat. § 260C.301, subd. 1(b)(2), (b)(5).

[3] At oral argument, father modified his position in response to questioning by this court. He argued that if both voluntary and involuntary grounds for TPR are proved, a district court must choose one or the other, and cannot order termination on both grounds. He agreed that a best-interests determination could influence the district court's choice in such circumstances. The county disagreed, arguing that if a basis for involuntary TPR is proved, the district court must order involuntary termination. The county also disagreed that a district court could rely on a best-interests determination to order voluntary termination, and not involuntary termination, if both grounds were proved. However, the county argued that a district court does not err by ordering termination on both voluntary and involuntary grounds, as happened here. Because the parties did not brief whether a district court may select either a voluntary or involuntary basis for TPR if both grounds are proved, we limit our analysis to the issue statement in father's brief: "If the District Court finds good cause

argument raises an issue of law, which we review de novo. *See In re Welfare of J.M.*, 574 N.W.2d 717, 721 (Minn. 1998) (stating that questions of law in a TPR case are reviewed de novo).

## I. The district court's findings supporting voluntary and involuntary TPR are not "factually inconsistent," "legally inconsistent," or "legally redundant."

Father argues that the district court's findings supporting voluntary and involuntary TPR are "factually inconsistent," "legally inconsistent," and "legally redundant." The district court found that voluntary TPR was supported by father's admissions that his ability to parent B.R. was compromised by his cognitive limitations, mental- and physical-health issues, and limited parenting skills. The district court found that involuntary TPR was supported by evidence regarding father's cognitive limitations, mental-health issues, and limited parenting skills. Thus, the district court's findings supporting both voluntary and involuntary grounds for TPR are not factually inconsistent. They generally reflect father's inability to provide for B.R.'s needs as a result of his cognitive limitations, mental-health issues, and inadequately developed parenting skills.

As to the purported legal inconsistency, father argues that because the words "voluntary" and "involuntary" have opposite meanings, "actions cannot, by definition, be both voluntary and involuntary." Despite the logical appeal of father's argument, "[t]he Legislature is at liberty to ignore logic and perpetrate injustice so long as it does not

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for a voluntary termination of parental rights, the proceedings result in a voluntary termination of parental rights regardless of the existence of cause for an involuntary termination."

transgress constitutional limits." *State ex rel. Coduti v. Hauser*, 219 Minn. 297, 303, 17 N.W.2d 504, 507 (1945).

Moreover, this court "presume[s] that plain and unambiguous statutory language manifests legislative intent. If statutory language is plain and unambiguous, the court must give it its plain meaning." *J.M.*, 574 N.W.2d at 721. The TPR statute provides that a district court may terminate all rights of a parent to a child with the written consent of a parent who for good cause desires to terminate parental rights or if it finds that one or more of the statutory grounds for involuntary termination exist. Minn. Stat. § 260C.301, subd. 1. The plain language of the TPR statute does not prevent the district court from terminating parental rights on multiple grounds, including both voluntary and involuntary grounds.

Nor does the plain language indicate that proof of a voluntary ground for TPR trumps proof of an involuntary ground. The legislature has demonstrated its ability to prioritize among different legal outcomes that could be based on one set of facts. For example, Minn. Stat. § 609.04, subd. 1 (2016), provides that "[u]pon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both." Minn. Stat. § 609.035, subd. 1 (2016), provides that, with certain exceptions, "if a person's conduct constitutes more than one offense . . ., the person may be punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them." The legislature did not include similar language limiting the relief a district court may provide if a set of facts establishes both voluntary

and involuntary grounds for TPR.[4] Father would have us read such language into the statute to conclude that if grounds for both voluntary and involuntary termination are proved, the district court may only terminate on the voluntary ground. We cannot supply what the legislature has omitted through intention or inadvertence. *Premier Bank v. Becker Dev., LLC*, 785 N.W.2d 753, 760 (Minn. 2010). For these reasons, we reject father's argument that the district court's findings are legally inconsistent.

As to the purported legal redundancy, father argues that "[t]he existence of an involuntary basis for termination is irrelevant if the Court finds good cause for a voluntary termination," relying on *In re Welfare of D.D.G.*, 558 N.W.2d 481, 486 (Minn. 1997). In *D.D.G.*, a parent agreed to voluntarily terminate his parental rights to a child for good cause on the second day of a trial on an involuntary TPR petition. 558 N.W.2d at 483. The district court found good cause and terminated the parent's parental rights to the child. *Id.* at 484. On appeal, the parent argued that his consent was invalid and that the record did not support good cause for termination. *Id.* at 484-85. The supreme court rejected those arguments. *Id.* at 485-86.

In discussing the district court's good-cause determination, the supreme court noted that the parent and the county inappropriately focused their arguments on whether the

[4] Our research after oral argument led us to Minn. R. Juv. Prot. P. 42.08, subd. 2(c)(4), which provides that at a hearing on a petition for voluntary TPR, the district court shall "obtain a waiver of the right to trial on the involuntary petition when the parent is voluntarily consenting to termination of parental rights after an involuntary termination of parental rights petition has been filed." Because neither party cited or discussed this rule and it is not apparent how the rule impacts our analysis, we leave consideration of the rule for another day.

parent was a responsible parent because the determination of whether good cause exists for voluntary termination "is not restricted by the existence of cause for *involuntary* termination" *Id.* But the supreme court did not consider or decide the issue in this case: whether a district court may grant termination of parental rights on both voluntary and involuntary grounds if both grounds are proved. Thus, the supreme court's holding in *D.D.G.* is not as broad as father suggests, and it does not lead to the conclusion that a proven basis for involuntary termination is ineffectual if a district court also finds good cause for a voluntary termination.

In sum, the district court's findings supporting termination of father's parental rights on both voluntary and involuntary grounds are not factually inconsistent, legally inconsistent, or legally redundant.

## II. Father did not convert the involuntary TPR proceeding into a voluntary proceeding by filing a voluntary TPR petition.

Father argues that by filing a voluntary TPR petition, he "successfully converted the involuntary proceedings into a voluntary one," relying on *In re Welfare of W.L.P.*, 678 N.W.2d 703, 712 (Minn. App. 2004). In *W.L.P.*, a parent challenged an order terminating his parental rights, arguing that the district court erred by concluding that his parental rights to another child had been involuntarily terminated and by therefore erroneously "subjecting him to the statutory presumption that he [was] palpably unfit to parent." 678 N.W.2d at 711. In the prior TPR proceeding, the parent had admitted the allegations of a county's petition for involuntary TPR. *Id.* at 707. The parent argued that "his admission to the

allegations in the petition converted the involuntary termination into a voluntary termination." *Id.* at 711.

This court rejected that argument, holding that "[a]dmitting to the allegations in a petition to terminate parental rights does not convert the proceeding into a voluntary termination of parental rights" and that "[t]o voluntarily terminate parental rights the parent must affirmatively demonstrate a desire to terminate the parent-child relationship for good cause." *Id.* at 705. In doing so, this court observed that

> there are at least two procedures parents can utilize to convert an involuntary termination petition into a voluntary one. Parents can: (1) file a new petition supported by a factual basis articulating good cause and cite to Minn. Stat. § 260C.301, subd. 1(a), as the statutory authority for the petition; or (2) formally amend the original petition to cite to Minn. Stat. § 260C.301, subd. 1(a), as the statutory basis for the petition.

*Id.* at 712. The parent in *W.L.P.* "did not avail himself of either procedure." *Id.*

Father argues that because this court "did not create any requirement that the County must agree to a voluntary termination or consent to dismiss its involuntary petition" in *W.L.P.*, he converted the county's involuntary TPR petition to a voluntary petition by filing his counterpetition and establishing good cause for termination. Father's argument, as well as his reliance on *W.L.P.*, is unavailing for three reasons.

First, "'[d]icta,' or more properly 'obiter dicta,' generally [are] considered to be expressions in a court's opinion which go beyond the facts before the court and therefore are the individual views of the author of the opinion and not binding in subsequent cases." *State ex rel. Foster v. Naftalin*, 246 Minn. 181, 207, 74 N.W.2d 249, 266 (1956). Regardless of this court's statements in *W.L.P.* regarding how to "convert" an involuntary

termination petition into a voluntary one, this court was not presented with such an attempted conversion. We therefore treat this court's statements in *W.L.P.* regarding the hypothetical conversion of an involuntary TPR petition into a voluntary petition as nonbinding dicta.

Second, this court did not cite authority for its assertion that a parent can "convert" another party's involuntary TPR petition into a voluntary one, and we are not aware of such authority. We again turn to the plain language of the current TPR statute, which does not describe a procedure for converting an involuntary petition into a voluntary petition. Minn. Stat. § 260C.307 (2016) (describing procedures in terminating parental rights). We also turn to the current Minnesota Rules of Juvenile Protection Procedure, which do not authorize such conversion or amendment of another party's petition for TPR. Instead, the relevant rule provides, "A party . . . shall *file a permanent placement petition* if the party disagrees with the permanent placement determination set forth in the petitions filed by other parties." Minn. R. Juv. Prot. P. 33.01, subd. 4(b) (emphasis added). In sum, we are not aware of precedential authority allowing a party to convert or amend another party's petition for TPR.

Third, and most importantly, allowing a parent to unilaterally prevent the involuntary termination of his parental rights even if statutory grounds for an involuntary termination are alleged and proved is inconsistent with "[t]he paramount consideration in all juvenile protection proceedings," which is "the health, safety, and best interests of the child." Minn. Stat. § 260C.001, subd. 2(a) (2016). In any TPR proceeding, "the best interests of the child must be the paramount consideration." Minn. Stat. § 260C.301, subd.

7 (2016). The legislature's creation of a presumption of palpable unfitness based on a prior involuntary TPR indicates that the legislature was concerned with the effect of a TPR on the parent's other children. *See* Minn. Stat. § 260C.301, subd. 1(b)(4) (setting forth presumption of palpable unfitness).

The district court is entrusted to determine the best interests of children in a TPR proceeding, and it generally has great discretion when determining the best interests of children. *See Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000) (stating that in matters of child custody, the law "leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations"). Allowing a parent to unilaterally "convert" an involuntary TPR proceeding into a voluntary one and thereby eliminate a potential presumption of palpable unfitness that could protect other children who may be affected by the TPR would usurp the district court's authority to provide for the best interests of children. Indeed, limiting a district court to an order for voluntary TPR even though grounds for involuntary TPR have been proved seems antithetical to the paramount best-interests consideration.

In sum, father did not convert the county's involuntary TPR proceeding into a voluntary one by filing a petition for voluntary TPR.

**Conclusion**

Error on appeal is never presumed. *Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949). It must be shown by the party asserting it. *Id.* In this case, father does not persuade us that the district court erred by terminating his parental rights on both voluntary and involuntary grounds. Because father does not otherwise challenge the

district court's termination of his parental rights on involuntary grounds under Minn. Stat. § 260C.301, subd. 1(b)(2), (b)(5), we affirm the termination order in its entirety, as well as the resulting presumption of palpable unfitness.

**Affirmed.**